

Message Text

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41

ORIGIN XMB-07

INFO OCT-01 ARA-16 ISO-00 SPC-03 AID-20 EB-11 NSC-07

RSC-01 CIEP-02 TRSE-00 SS-20 STR-08 OMB-01 CEA-02

CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 OPIC-12 LAB-06

SIL-01 GSA-02 L-03 /135 R

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DRAFTED BY: XMB:ROBERT S RENDELL

APPROVED BY: EB/OCA/REP:LPOMEROY

XMB:WARREN W GLICK

EB/IFD/ODF:EMLINTON

ARA-LA/EP:RFWEBER

ARA-LA/EP/P:MRFRECHETTE

ARA/ECD:GOLSEN

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R 262147Z MAR 74

FM SECSTATE WASHDC

TO AMEMBASSY LIMA

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FOR AMBASSADOR FROM EXIMBANK

E.O. 11652: N/A

TAGS: ETRD, EFIN, EMIN, PE

SUBJ: EXCHANGE ASSURANCES

1. ON MARCH 11, 1974, THE EXIMBANK AUTHORIZED A LINE OF CREDIT IN FAVOR OF THE SOUTHERN PERU COPPER CORPORATION (SPCC) OF \$55,000,000 TO ASSIST IT IN PURCHASING U.S. GOODS AND SERVICES FOR USE IN THE CUAJONE COPPER PROJECT. EXIMBANK ALSO AGREED TO ISSUE ITS COMPREHENSIVE, FINANCIAL GUARANTEE TO UNNAMED FINANCIAL INSTITUTIONS FOR \$20,000,000 OF LOANS BY SUCH FINANCIAL INSTITUTIONS TO SPCC. WE ARE CURRENTLY IN THE PROCESS OF NEGOTIATING A LOAN AGREEMENT WITH SPCC.

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2. WE HAVE INFORMED SPCC THAT AS A CONDITION PRECEDENT TO

EXIMBANK DISBURSEMENTS UNDER THE CREDIT, WE MUST RECEIVE AN EXCHANGE ASSURANCE FROM THE CENTRAL BANK OF PERU (CBP) OR THE APPROPRIATE GOVERNMENTAL AUTHORITY FOR THE GOVERNMENT OF PERU (GOP) THAT SUFFICIENT UNITED STATES DOLLARS WILL BE MADE AVAILABLE TO SPCC TO SERVICE PAYMENTS OF SPCC'S INDEBTEDNESS TO THE LENDERS, INCLUDING EXIMBANK. IN ORDER TO PROVIDE SECURITY FOR THE LOANS MADE BY THE LENDERS, SPCC WILL EXECUTE AN ASSIGNMENT OF THE PROCEEDS FROM THE SALE OF COPPER PRODUCED AT CUAJONE AND TOQUEPALA, WHICH ASSIGNMENT WILL RUN IN FAVOR OF ALL THE LENDERS, INCLUDING EXIMBANK. UNDER THE TERMS OF THE ASSIGNMENT, THE CHASE MANHATTAN BANK HAS BEEN APPOINTED ASSIGNEE OR AGENT (AGENT) FOR ALL THE LENDERS, AND PROCEEDS FROM THE SALE OF THE COPPER WILL BE PAID DIRECTLY TO CHASE IN NEW YORK CITY. A BILATERAL AGREEMENT PERTAINING TO THE CUAJONE PROJECT WAS SIGNED BY THE GOP AND SPCC ON DECEMBER 19, 1969, WHICH, AMONG OTHER THINGS, GOVERNS THE OPERATION OF THE ASSIGNMENT AND THE DISPOSITION OF THE COPPER PROCEEDS. WHILE THE BILATERAL AGREEMENT IS IN EFFECT, THE COPPER PROCEEDS WILL REMAIN IN CERTAIN BANK ACCOUNTS IN NEW YORK, AND REPAYMENT OF THE LENDERS' CREDITS WILL BE MADE DIRECTLY FROM FUNDS MAINTAINED BY THE AGENT IN THESE BANK ACCOUNTS IN NEW YORK. HOWEVER, THE BILATERAL AGREEMENT WILL LAPSE ONCE SPCC HAS RECOVERED ITS INVESTMENT IN CUAJONE AND IT IS ANTICIPATED THAT AT SUCH TIME A MAJORITY OF EXIMBANK'S LOAN WILL BE OUTSTANDING AND NOT REPAID BY SPCC. ONCE THE BILATERAL AGREEMENT HAS LAPSED, THE ASSIGNMENT OF THE COPPER PROCEEDS WILL REMAIN IN EFFECT, BUT THE AGENT WILL BE REQUIRED UNDER PERUVIAN EXCHANGE LAWS AND REGULATIONS TO MAKE DEPOSITS ON BEHALF OF SPCC OF U.S. DOLLARS AND OTHER HARD CURRENCIES TO THE CBP IN ADVANCE OF THE FUNDS RECEIVED BY IT IN NEW YORK FROM THE COPPER SALES. IN RETURN FOR THESE DEPOSITS, SPCC WILL RECEIVE FOREIGN EXCHANGE CERTIFICATES ISSUED BY THE CBP. SPCC IS ENTITLED UNDER CURRENT PERUVIAN LAWS AND REGULATIONS TO PRESENT, TO THE CBP, FOREIGN EXCHANGE CERTIFICATES IN AN AMOUNT NECESSARY TO SERVICE ITS DEBT AND RECEIVE THEREFOR U.S. DOLLARS WHICH WILL BE REMITTED BACK TO THE AGENT'S BANK ACCOUNTS IN NEW YORK.

3. WE ARE CONCERNED THAT IN THE ABSENCE OF THE BILATERAL UNCLASSIFIED

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AGREEMENT THE CBP MIGHT REFUSE TO HONOR THESE FOREIGN EXCHANGE CERTIFICATES IN WHICH CASE SPCC WOULD NOT HAVE THE U.S. DOLLARS TO REPAY EXIMBANK AND THE PRIVATE LENDERS GUARANTEED BY EXIMBANK. (PLEASE NOTE THAT ALL EXIMBANK LOANS ARE MADE IN U.S. DOLLARS AND WE ARE REPAID IN U.S. DOLLARS). THE GOP HAS ISSUED A DECREE (DECRETO LEY NO. 20138, SEPTEMBER 12, 1973, ENGLISH TRANSLATION FOLLOWS) WHICH WOULD SEEM TO PROVIDE US WITH SOME ASSURANCE THAT

U.S. DOLLARS WILL BE AVAILABLE TO SPCC AFTER THE BILATERAL AGREEMENT HAS LAPSED, AND SPCC HAS OFFERED THIS DECREE TO EXIMBANK. NEVERTHELESS, WE WOULD LIKE THE EMBASSY TO PURSUE THIS MATTER WITH CBP OR GOP OFFICIALS TO ASCERTAIN WHETHER A SPECIFIC EXCHANGE ASSURANCE APPLICABLE TO EXIMBANK WOULD BE AVAILABLE. THIS ASSURANCE COULD TAKE THE FORM OF A LETTER BY THE CBP OR THE APPROPRIATE GOP MINISTRY TO EXIMBANK OR TO SPCC ASSURING THAT U.S. DOLLARS WILL BE MADE AVAILABLE TO SERVICE THE EXIMBANK CREDIT. SPCC HAS ADVISED US THAT IT IS NOT IN A POSITION TO REQUEST SUCH AN EXCHANGE ASSURANCE FROM THE CBP OR THE GOP AS SPCC IS ALREADY ENGAGED IN DIFFICULT AND SENSITIVE NEGOTIATIONS WITH THE PERUVIANS ON OTHER MATTERS RELATING TO CUAJONE.

4. THERE IS SOME URGENCY IN THIS MATTER AS SPCC HAS ASKED US TO MAKE THE EXIMBANK LOAN AGREEMENT OPERATIVE AS SOON AS POSSIBLE SO THEY CAN COMMENCE DRAWDOWNS IN THE NEAR FUTURE. THEREFORE, WE WOULD APPRECIATE YOUR TAKING UP OUR REQUEST AT YOUR EARLIEST CONVENIENCE AND REPORTING YOUR PROGRESS BY CABLE.

5. DECRETO LEY NO. 20138 (SEPT 12, 1973):

BEGIN QUOTE WHEREAS

IT IS CONVENIENT TO STIMULATE THE CONTRACTING OR EXTERNAL FINANCING ON TERMS CONFORMING TO THE DEVELOPMENT PLANS (OF PERU) AND WITHIN THE POSSIBILITIES OF THE INTERNATIONAL FINANCIAL MARKET.

FOR THIS PURPOSE IT IS CONVENIENT TO DEFINE THE SYSTEM APPLICABLE FOR THE USE OF FOREIGN EXCHANGE LOANS THE MATURITY DATES OF WHICH EXCEED THE TERMS OF THE
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CONTRACTS SIGNED WITH THE SUPREME GOVERNMENT UNDER PROMOTIONAL SYSTEMS.

IN USE OF THE POWERS VESTED IN IT, AND WITH THE APPROVAL OF THE COUNCIL OF MINISTERS, HAS ISSUED THE FOLLOWING DECREE LAW:

COMPANIES WHICH HAVE SIGNED OR WHICH MAY SIGN CONTRACTS WITH THE SUPREME GOVERNMENT IN ACCORDANCE WITH PROMOTIONAL REGIMES ARE AUTHORIZED TO MAKE PAYMENTS OF PRINCIPAL AND INTEREST ON THOSE FOREIGN CREDITS CONTRACTED FOR INVESTMENT IN THE COUNTRY (PERU) WHICH HAVE MATURITY DATES EXCEEDING THE TERMS OF THE PROMOTIONAL CONTRACTS GIVING ORIGIN TO SUCH CREDITS BY APPLICATION OF

THE GENERAL SYSTEM OF FOREIGN CERTIFICATES IN
EFFECT ON THE DATE OF EXECUTION OF SUCH FINANCING
CONTRACTS.

END QUOTE.
RUSH

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NNN

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Disposition Event:
Disposition History: n/a
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